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QUESTION OF THE REALIZATION IN ALL COUNTRIES OF THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS CONTAINED IN THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND IN THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, AND STUDY OF SPECIAL PROBLEMS WHICH THE DEVELOPING COUNTRIES FACE IN THEIR EFFORTS TO ACHIEVE THESE HUMAN RIGHTS

Written statement submitted by North-South XXI, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[13 March 1997]

1. No one contests the need for sanctions in order to ensure that measures to regulate international society are effective. The main features of such sanctions, however, should be that they apply equally to all and do not result in effects that are contrary to the fundamental principles enshrined in the Charter of the United Nations. This is not the case of the economic sanctions being applied in a discriminatory manner to certain member States of the international community.

2. Some of these sanctions are of a unilateral nature. This is the case of the embargos and blockades ordered by the United States and some of its allies against the Democratic People's Republic of Korea (at least partially) since 1949, when that State was founded, and against Cuba, since 1959, or for over 37 years. The 1992 Torricelli Act and 1996 Helms-Burton Act aggravated the embargo measures by threatening third countries that wished to conclude commercial contracts with Cuba. The measures the United States has taken are totally unlawful.

3. International law cannot be self-proclaimed and the United States has no ground for considering that its interests justify the use of force and are identical to the common interest. This practice by the Americans is merely a relic of "private justice", an archaic practice in which the individual "takes the law into his own hands". In its Judgment of 27 June 1986, the International Court of Justice clearly rejected the American claim to be exercising "countermeasures" against Nicaragua. Unarmed reprisals, as well as measures of economic coercion, the aftermath of "cold war" practices, are condemned in the Final Act of the 1969 International Conference on the Law of Treaties and United Nations General Assembly resolution 36/103 of 9 December 1981.

4. These practices are rejected on the basis of United Nations principles dismissing unilateral practices and organizing multilateral sanction mechanisms in order to eradicate arbitrary intervention by States. The United States has been reminded of this by the regional international organizations (for example, by the OAS concerning Cuba).

5. Other economic sanctions were imposed by the Security Council on Iraq, from 1990, and on Libya, from 1992. Although these sanctions are of a quite different nature from those ordered by the United States unilaterally, they nevertheless contain a series of irregularities that render them contrary to international law and to the Charter of the United Nations itself.

6. The vagueness of the successive resolutions against Iraq, which give rise to varying interpretations, the lack of time limits ending the sanctions, and the establishment of a monitoring regime that permanently halves the sovereignty of a Member State of the United Nations (control of its means of defence, amputation of part of its territory in order to protect a people who are not protected in the neighbouring State, etc.), show that the goal of the economic sanctions is not to re-establish the rule of international law but to gain control of Middle Eastern energy resources. The economic sanctions provided for in the Charter of the United Nations cannot legally be used to orchestrate speculative oil operations.

7. The sanctions ordered against Libya for a terrorist act (Lockerbie) are not based on any evidence. The United States, through the Security Council, albeit it an institution that aims at the peaceful settlement of conflicts, has used all available procedures to exclude both the application of the 1971 Montreal Convention, the legal instrument that is perfectly suited to the case at hand, recourse to the International Court of Justice, with which Libya filed proceedings, and any other negotiated solution, including action by a Western court, preferring instead to institute an embargo. The Security Council has thus turned into an institution for the maintenance of tension, rather than the maintenance of peace or the re-establishment of international law.

8. In any event, the sanctions ordered are disproportionate to the act of which Libya is accused; 1/ the extradition measures demanded against the two Libyan nationals are at variance with all national bodies of legislation (including American legislation) and legally unfounded. The goal of the embargo is in contradiction to the principles of the Charter: the elimination of the Libyan political regime is being sought (like that of Cuba) in contradiction to the right of peoples to choose their socio-political system, when that system manages immense oil resources and challenges American hegemony.

9. The United Nations Commission on Human Rights is competent to consider these questions, for all these embargos have a common feature: they are in fact collective sanctions that are detrimental to human rights, in particular the right to health and more generally the right to development.

10. The individualization of penalties is generally acknowledged to have been an important step forward in the development of the law. The existing international criminal courts, and the draft statute for an international criminal court reflect the will of the international community not only to tolerate impunity no longer but also to punish the individuals responsible directly rather than peoples as a whole.

11. Sanctions like the embargo, however, can only be collective; they basically affect, not only the weakest States, but also the most disadvantaged groups within the populations to which they are applied. Their collective nature distorts the sanctions and makes them incompatible with respect for human rights. The obligations which States assume when they accede to the declarations, covenants and charters protecting human rights are not suspended when they impose an embargo. They remain fully in force and cannot be called into question by any sanction whatsoever. Human rights standards are a matter of jus cogens and are acknowledged by the international community as being inherently and absolutely binding, with no derogation permitted. Moreover, when States undertake commitments under the human rights declarations and covenants, they do so with respect to all other States, in all circumstances, with no conditions whatsoever. The people of the sanctioned State and the individuals comprising it have lost none of the rights which the other States recognize them as having. The International Court of Justice (advisory opinion of 1971) ruled that the Namibian people, then under South African domination, should not be subjected to the sanctions taken against the apartheid regime. The major Powers themselves have referred to the need to continue their food and health assistance despite the existence of sanctions against the States concerned (the United States vis-à-vis Ethiopia, for example). The European Union has made several recommendations to this effect.

1/ Cf. the fact that the members of the Khmer Rouge delegation to the United Nations continued in their posts despite the Khmer Rouge responsibility for the genocide of the Cambodian people.

12. It is also paradoxical that humanitarian law has developed in an effort to provide civilian populations with better protection in cases of armed conflict, whatever the responsibilities of the belligerent State, whereas in the case of an embargo, international law in general is incapable of protecting civilians in peacetime. The reservations made by the International Law Commission in this respect are worthy of note.

13. The embargo is hurting the Iraqi and Libyan peoples in the areas of health and food in particular. Yet the right to health is one of the fundamental human rights, as proclaimed by the 1993 Vienna Declaration.

14. The United Nations is an institution for the promotion, rather then the undermining, of human rights. Likewise, international law cannot be used to cloak the destruction of peoples.

15. It is paradoxical to see some major Powers practise "humanitarian interference" in the name of a mission for the universal protection of human rights, while acting elsewhere to force the loss of rights on others who are blameless. Unless the end goal of all these practices is to make the principle of sovereignty disappear altogether.

16. The Commission on Human Rights would therefore be justified in stating that economic sanctions are incompatible with protection of fundamental human rights and alerting the other United Nations bodies to that effect.